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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ASVINI PATEL and PRAVINA PATEL,	)	Case No.: 5:13-cv-00748-PSG
Plaintiffs,	)	AMENDED COMPLAINT FOR
vs.	)	WRONGFUL FORECLOSURE
	)	JURY TRIAL DEMANDED
U.S. BANK, N.A.; WELLS FARGO BANK,	)	
N.A.; HOMEWARD RESIDENTIAL, INC.;	)	
POWER DEFAULT SERVICES, INC.;	)	
MORTGAGE ELECTRONIC	)	
REGISTRATION SYSTEMS, INC.; AND	)	
DOES 1-100, INCLUSIVE,	)	
Defendants	)	

**I. Introduction**

1. This action arises out of the current economic crisis that has hit the nation and continues to destroy homeowners' ability to maintain their properties. The failure and unraveling of the real estate market has caused a rush of foreclosures on properties all over the country by banks and mortgage servicing companies, such as Defendants. As the foreclosure crisis continues, it has become clear that in their efforts to foreclose on as many properties as quickly as possible lenders and servicers have been taking action outside the law. The extent of

1 the crisis and the clear need for action has once more been highlighted by the recent national  
2 mortgage settlement.

3 2. This case is yet another example of those in the mortgage and foreclosure industry  
4 engaging in wrongful, illegal, and permanently damaging activities against homeowners.

5 **II. Parties**

6 3. Plaintiffs ASVINI PATEL and PRAVINA PATEL (collectively “Plaintiffs”) are  
7 allegedly the Trustors/Borrowers on that certain Deed of Trust recorded on October 13, 2006 as  
8 Instrument No. 2006091088 in the Official Records of the Recorder of Monterey County,  
9 California, purportedly putting a lien on the real property located at 24660 Vereda Corta, Salinas,  
10 CA 93908, APN No. 161-622-012 (the “Subject Property”).

11 4. Plaintiffs are informed and believe and on that basis allege that Defendant U.S.  
12 Bank, N.A. (“U.S. Bank”), is a National Banking Association organized under the laws of the  
13 United States with its main office in Cincinnati, Ohio.

14 5. Plaintiffs are informed and believe and on that basis allege that Defendant Wells  
15 Fargo Bank, N.A.. (“Wells Fargo”), is a National Banking Association organized under the laws  
16 of the United States with its main office in Sioux Falls, South Dakota. Wells Fargo is Master  
17 Service to the securitized trust and liable in privity for the acts and omissions of sub-servicer  
18 Homeward Residential, Inc..

19 6. Plaintiffs are informed and believe and on that basis allege that Defendant  
20 Homeward Residential, Inc. (“Homeward”), is a California Corporation registered with the  
21 Secretary of State as Corporation No. C3058956.

22 7. Plaintiffs are informed and believe and on that basis allege that Defendant Power  
23 Default Services, Inc. (“PDS”) is a California Corporation registered with the Secretary of State  
24 as Corporation No. C3085711.

1           8.       Plaintiffs are informed and believe and on that basis allege that Defendant  
2 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), is a California  
3 Corporation registered with the Secretary of State as Corporation No. C3306164.

4           9.       Plaintiffs are ignorant of the true names and capacities of defendants sued herein  
5 as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.  
6 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

7  
8                               **III. Venue and Jurisdiction**

9           10.      All events referred to in this complaint and the Subject Property are located  
10 within the boundaries of Monterey County in the State of California. Therefore, jurisdiction and  
11 venue is properly with this Court.

12                               **IV. Facts**

13           11.      On October 13, 2006, Plaintiffs recorded a Deed of Trust in the Monterey County  
14 Recorder's Office against the Subject Property to secure a Promissory Note in the amount of  
15 \$1,500,000 in favor of American Brokers Conduit ("ABC") as original "Lender." The Deed of  
16 Trust names United Capital Title Company ("United") as Trustee. MERS was named as  
17 Beneficiary under the Deed of Trust, nominee for Lender.

18           12.      On or about January 16, 2007, ABC securitized and sold Plaintiffs' Note and the  
19 beneficial interest in Plaintiff's Deed of Trust to the MASTR ADJUSTABLE RATE  
20 MORTGAGES TRUST 2007-1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES  
21 2007-1 ("MASTR ARM TRUST 2007-1") according to Plaintiffs' securitization audit, Mortgage  
22 Securitization Audit & Analysis Report, (a true and correct copy of which is hereto attached as  
23 Exhibit A) (see Ex. A, pp. 22, 31), in violation of the Pooling and Servicing Agreement ("PSA")  
24 for the trust. See Ex. A, p. 46. The U.S. Bank is the assignee of beneficial interest as trustee for  
25 this securitized Trust. See Ex. A, p. 23.

1           13.     Subsequent to the closing date for the Trust, January 16, 2007, and the transfer of  
2     beneficial interest, ABC could have only retained the rights to service the note and mortgage,  
3     and so would only have been able to transfer servicing rights and pursuant to the Master Loan  
4     Purchase and Servicing Agreement, did in fact sell and transfer the servicing rights. See Ex. A,  
5     p. 28.

6           14.     Wells Fargo, and/or Homeward collected mortgage payments from Plaintiffs as a  
7     Servicer to Plaintiff's loan, without authorization; violating the Deed of Trust and the MASTR  
8     ARM TRUST 2007-1's PSA.

9           15.     U.S. Bank failed to timely record the assignment to the Trust.

10          16.     Plaintiffs' Deed of Trust includes provisions for acceleration remedies limiting  
11     the power of sale to the lender in case of default.

12          17.     The Deed of Trust provides: "If Lender invokes the power of sale, Lender shall  
13     execute or cause Trustee to execute a written notice of the occurrence of an event of default and  
14     of Lender's election to cause the property to be sold. Trustee shall cause this notice to be  
15     recorded in each county in which any part of the Property is located. [] Trustee shall give public  
16     notice of sale . . . ." A true and correct copy of Plaintiffs' Deed of Trust is attached hereto as  
17     Exhibit B. See Ex. B, p. 13 ¶ 22.

18          18.     U.S. Bank, Wells Fargo, Homeward, PDS and MERS sold the property in  
19     violation of this provision without executing a legal and valid written notice of the occurrence of  
20     an event of default and of Lender's election to cause the property to be sold.

21          19.     Lender may only invoke an election of its power of sale upon default.

22          20.     There was no default at the time of ABC's sale to the MASTR ARM TRUST  
23     2007-1; therefore Defendants breached the provisions of paragraph 22 of the Deed of Trust  
24     because there was no notice prior to invocation of the power of sale.

1           21.     Plaintiffs' audit indicates that U.S. Bank, Wells Fargo, Homeward, PDS and  
2 MERS are in breach of the PSA for the MASTR ARM TRUST 2007-1 and in violation of IRS  
3 Code Sec. 860G (2004, as amended). See Ex. A, pp. 50, 57.

4           22.     Plaintiffs are informed and believe the securitized trust must have received the  
5 Assignment of the Beneficial Interest of the Deed of Trust within 90 days of the close of the  
6 Trust, pursuant to the PSA for this Trust. In this case there was no recorded assignment until  
7 July 6, 2010 in favor of American Home Mortgage Servicing, Inc. ("AHMSI") as original  
8 Lender and Loan Servicer under Plaintiffs' Deed of Trust (ABC was a dba for AHMSI). See Ex.  
9 A, p. 25. Late recording was a business practice of that saved thousands of dollars of recording  
10 fees, preparation fees, etc. The consequence, however, is that all those loans are not assets of the  
11 Trust, including Plaintiffs' Deed of Trust. Therefore, Defendants would either need to disclaim  
12 the asset if the Trust wishes to remain a pass-through entity, or pay the 35% corporate/trust tax  
13 rate on all of its income. Plaintiffs' counsel on behalf of Plaintiffs, is a whistleblower to this  
14 scheme under the authority and at the request of the Internal Revenue Service, pursuant to 26  
15 U.S.C. 7801(1982, as amended), for the purpose of reporting potential violations of Internal  
16 Revenue laws.

17           23.     The closing date for the MASTR ARM TRUST 2007-1 was January 16, 2007 (see  
18 Ex. A, p. 25) and according to the Real Estate Mortgage Investment Conduit (REMICs)  
19 Reporting Information, IRS Publication 938, 2008, the Trust was no longer reporting income as  
20 of 2008. Therefore, any Assignment could not have REMIC status, and the advantageous tax  
21 treatment associated therewith. This scheme to avoid taxes and fees is the motive for  
22 Defendant's aforementioned breach of Defendant's PSA should not be sanctioned by this court

23           24.     On July 6, 2010, an Assignment of the Deed of Trust (signed March 1, 2010) was  
24 recorded in the Monterey County Recorder's Office. In this document, MERS purports to  
25 convey the beneficial interest in Plaintiffs' Deed of Trust to AHSMI The document was signed  
26 by Andrew Fuerstenberger, allegedly as Vice President, and Kathy Smith, allegedly as Assistant

1 Secretary of MERS, but Mr. Fuerstenberger and Ms. Smith were actually robo-signers, and  
2 employees and U.S. Bank. See Ex. A, p. 47. While these signers are not, in fact, officers of  
3 MERS, California courts are clear that MERS is beyond the laws of mortal people, and ordinary  
4 rules such as agent/principal and the obligation to be truthful under penalty of perjury do not  
5 apply. This Assignment is invalid due to the failed securitization and due to the use of robo-  
6 signers. See Ex. A, p. 47.

7 25. On July 6, 2010 an Assignment of the Deed of Trust was recorded in the  
8 Monterey County Recorder's Office. In this document, MERS purports to convey the beneficial  
9 interest in Plaintiff's Deed of Trust to U.S. Bank, as Trustee for the MASTR ARM TRUST  
10 2007-1. The document was also signed by Mr. Fuerstenberger and Ms. Smith, allegedly as an  
11 authorized officers of MERS, but Mr. Fuerstenberger and Ms. Smith were actually robo-signers,  
12 and employees of U.S. Bank. See Ex. A, p. 47. This Assignment is also invalid due to the failed  
13 securitization and the use of robo-signers.

14 26. On or about April 29, 2010, a Substitution of Trustee was recorded in the  
15 Monterey County Clerk's Office. This document was signed by Theresa Esposito, purportedly  
16 as Vice President of U.S. Bank and Carolyn White, purportedly as Assistant Vice President of  
17 U.S. Bank. Through this document U.S. Bank purports to substitute PDS as trustee in place of  
18 original trustee, United. Plaintiffs are informed and believe and on that basis allege that Ms.  
19 Esposito and Ms. White hold themselves out as authorized representatives of U.S. Bank but these  
20 persons are, in fact, robo-signers who have no personal knowledge of the facts pertaining to  
21 Plaintiffs' Deed of Trust and beneficial interest, and were never properly authorized to act on  
22 behalf of the true beneficiaries of the Note and Deed of Trust.

23 27. On that same day, October 19, 2012, a Notice of Default and Election to Sell  
24 Under Deed of Trust ("NOD") was recorded in the Monterey County Recorder's Office. The  
25 Notice of Default was signed by David Lopez, on behalf of PDS, as agent for beneficiary. The  
26 NOD was accompanied by a Declaration of Due Diligence pursuant to Cal. Civil Code Section

1 2923.5(b) and signed by Nurfeta Beklic as Vice President for an unknown business entity.  
2 Therefore, it is unclear as to whether the foreclosing parties or any authorized agent complied  
3 with Civil Code § 2923.5 and Defendants failed to record a sufficient declaration of compliance,  
4 invalidating the NOD.

5 28. On October 23, 2012, PDS served a Debt Validation Notice on behalf of U.S.  
6 Bank as Trustee for MASTR ARM TRUST 2007-1 and Homeward stating that Plaintiffs' loan  
7 was referred to PDS for foreclosure.

8  
9 **A. First Cause of Action for Wrongful Foreclosure by Plaintiffs Against Defendants**

10  
11 29. Plaintiffs re-allege and incorporate by reference all prior paragraphs in this  
12 complaint, as though fully set forth hereafter.

13 30. The impending foreclosure sale of Plaintiffs' property is illegal and wrongful both  
14 because the NOD is invalid and because Defendants U.S. Bank and/or Wells Fargo and  
15 Homeward is not the current Beneficiary under Plaintiffs' Deed of Trust, or Servicer(s).

16 31. ABC was the original Lender/Beneficiary under the Deed of Trust. ABC  
17 however securitized and sold the beneficial interest in Plaintiffs' Deed of Trust shortly after it  
18 recorded the Deed of Trust on October 13, 2006. From that time on, ABC only owned the  
19 servicing rights to Plaintiffs' loan if anything at all, and no longer held the beneficial interest  
20 under the Deed of Trust.

21 32. Because the Assignment(s) of Deed of Trust are false and invalid (see Ex. A, p.  
22 46) and there are no other documents, recorded or otherwise, legally conveying the beneficial  
23 interest in the Deed of Trust to AHMSI or Defendant U.S. Bank, neither is currently the *true*  
24 beneficiary. Since U.S. Bank is not the beneficiary, they cannot exercise the power of sale and  
25 any attempted foreclosure sale of Plaintiffs' property on its behalf would thus be invalid and  
26 wrongful.

33. The imminent Trustee's sale would also be wrongful because, as discussed above, Defendant PDS is *not* the Trustee under the Deed of Trust, rendering the October 19, 2012 NOD invalid. Because the NOD is invalid, it cannot lead to a legal foreclosure sale of Plaintiffs' property. Moreover, just as Defendant PDS cannot Notice a valid Trustee's sale, it also cannot conduct a valid Trustee's Sale. Thus, if Defendant PDS were permitted to conduct the Trustee's sale, the sale would be wrongful and any subsequent Trustee's Deed Upon Sale would be void. *Dimock v. Emerald Properties, Inc.* (2000) 81 Cal. App. 4th 868, 876 (holding Trustee's Sale void where it was completed by an entity who was not in fact the trustee).

34. For the reasons stated above, Defendants are strangers to Plaintiffs' Deed of Trust and can claim no valid interest in the Subject Property. Thus, allowing Defendants to complete a foreclosure sale in the instant case violate the statutory scheme governing non-judicial foreclosures and would cause Plaintiffs to wrongfully lose their home. *See* Cal. Civ. Code § 2924 et seq.

35. Further, Plaintiffs are not required to tender the amount due to challenge documents recorded and clouding Plaintiff's title to the Property. *Tamburri v. Suntrust Mortgage, Inc.* (N.D. Cal. 2011) 2011 WL 6294472, \*4 ("where a sale is void, rather than simply voidable, tender is not required"). As the Court found in *Dimock*, a Trustee's Deed issued by an entity who was not the correct Trustee is void. *Dimock v. Emerald Properties, Inc.* (2000) 81 Cal. App. 4th 868, 876; *see also Lona v. Citibank, N.A.* (2011) 202 Cal. App. 4th 89, 113,

36. For the reasons stated above, there is a likelihood that Plaintiffs will prevail on the merits of their wrongful foreclosure claim. If Defendants are permitted to rely on the void and wrongful NOD to complete this foreclosure process by conducting a Trustee's sale and issuing a Trustee's Deed Upon Sale, Plaintiffs will wrongfully lose their property. Such injury is irreparable and cannot be adequately compensated by financial means. Moreover, real property is considered unique in California, and monetary damages are deemed inadequate to compensate Plaintiffs for the loss thereof. *Stockton v. Newman* (1957) 148 Cal. App. 2d 558, 564.



1 WHEREFORE, Plaintiffs pray for judgment against defendants and each of them, as set  
2 forth below:

3  
4 **Prayer for Relief**

5 WHEREFORE, Plaintiffs ASVINI PATEL and PRAVINA PATEL pray for a judgment  
6 against the Defendants, and each of them, as follows:

7  
8 1. For a judgment declaring that Deed of Trust recorded as document no. 2006091088 in  
9 the Monterey County Recorder's Office invalid and any subsequent proceedings based on these  
10 documents are also invalid.

11 2. For a temporary restraining order, a preliminary injunction, and a permanent  
12 injunction, all enjoining Defendants, and each of them, and their respective agents, servants, and  
13 employees, and all persons acting under, in concert with, or for them, from asserting any interest  
14 in the Subject Property or otherwise attempting in any manner to dispossess Plaintiffs from  
15 possession of the Subject Property; or taking any action to enforce any other remedy purportedly  
16 provided to them by the Deed of Trust;

17 3. For a judgment forever enjoining said defendants, and each of them, from claiming  
18 any estate, right, title or interest in the subject property;

19 4. For an order compelling said Defendants, and each of them, to transfer legal title and  
20 possession of the subject property to Plaintiffs herein;

21 5. For damages according to proof at trial;

22 6. For costs of suit and attorneys' fees herein incurred;

23 7. For punitive damages according to proof at trial;

24 8. For statutory damages; and

25 9. For such other relief as the Court may deem just and proper.  
26

**Demand for Jury Trial**

Plaintiffs hereby demand a trial by jury of each and every claim so triable.

DATED: July 30, 2013

Respectfully submitted,

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